FORMAL ISSUE PAPER

STATE OF CALIFORNIA
BOARD OF EQUALIZATION

Issue Paper Number 99-002

BOARD OF EQUALIZATION
KEY AGENCY ISSUE

- ☐ Board Meeting
- ☒ Business Taxes Committee
- ☐ Customer Services Committee
- ☐ Legislative Committee
- ☐ Property Tax Committee
- ☐ Technology & Administration Committee
- ☐ Other

CENTRALIZATION OF THE OFFER-IN-COMPROMISE PROGRAM SALES AND USE TAX DEPARTMENT

I. Issue

Should the Board centralize its offer-in-compromise program to allow for uniform review of all offers submitted in a standardized method?

II. Staff Recommendations

1. A new unit within the Special Procedures Section should be developed and staffed, through redirection, exclusively to handle all offers submitted to the Board.
2. A form should be developed for tax debtors to complete when submitting any offer-in-compromise. A pamphlet should also be developed detailing the procedure for submitting an offer, a tax debtor's rights and responsibilities, and the general guidelines for acceptability of offers-in-compromise.
3. Revised procedures should be included in the Compliance Policy and Procedures Manual. Field staff should be trained on the new procedures.

III. Other Alternative(s) Considered

Another alternative would be to develop a form and an explanatory pamphlet to publicize and standardize the offer-in-compromise program while not adjusting staffing or district control of the accounts. Within each district, a Specialist could be designated to investigate and make recommendations for all offers under district control. Training could be provided to enhance statewide uniformity. Special Procedures could continue to review all recommended offers.

IV. Background

In general, an offer in compromise is a process whereby the debtor offers to pay an amount that he or she believes to be the maximum amount that can ever be paid on a debt. If the parties agree to the amount offered, the debt is compromised (reduced) to that amount.

The Board does not have the administrative authority to compromise a tax debt, but instead must bring a civil action against the tax debtor, an action that requires the assistance of the Attorney General (AG), as discussed below.

Current procedures call for a tax debtor to submit an offer-in-compromise to the district of control, and a subsequent investigation of the financial condition by the district. If the district determines that the offer is in the best interests of the state, a deposit of the offered amount is secured and the offer and related financial documentation is forwarded to the Special Procedures Section for further review. Special Procedures will ascertain which offers are qualified, and refer them to the Attorney General. The Attorney General files a stipulated judgment and a subsequent satisfaction of the judgment when all terms of the agreement have been met. The court documents, which include a stipulation setting forth the terms of the compromise, are a matter of public record. If an offer is rejected, the deposited amount is refunded to the tax debtor.

The level of control exercised by the district offices has led to a lack of uniformity in the acceptance of offers. Most offers never pass the initial level of review. Furthermore, there is a pervasive impression among field staff that offers are difficult to pass through the approval process.

There is currently a Board Legislative Proposal, labeled Proposal 3-1, to add section 7093.6 to the Revenue and Taxation Code. This section will allow for the administrative authority to accept offers in compromise on final tax liabilities without using the court system. This proposal, if passed, may clear some of the perceived roadblocks and increase the number of offers that are forwarded by the district offices.

V. Staff Recommendation

A. Description of the Staff Recommendation

1. A new unit would be developed and staffed in the Special Procedures Section to handle all offers submitted to the Board. This unit would potentially be labeled the Special Procedures – Offers-in-Compromise Team (SP-OIC). SP-OIC would be staffed with a Business Taxes Supervisor II to supervise and train staff, five Business Taxes Compliance Specialists to process offers and a Tax Technician III to provide screening and support services. This unit would handle any offer submitted from the date received by the Board until conclusion and the related case or cases would be removed from district control.

Submission of an offer would be defined to include a completed offer-in-compromise form as developed by staff. Once a case is referred to SP-OIC, the responsibility for working the case would be moved from district control to headquarters control. The district of control would have 30 days to analyze and make a non-binding recommendation to SP-OIC on the case. SP-OIC would collect financial documentation, order asset searches if necessary, make any necessary adjustments to the account and monitor existing installment payment agreements while the offer is being submitted or considered. If SP-OIC denies an offer, they should attempt to secure an installment payment agreement or execute a write-off of the account when appropriate before referring the account back to the district. The timeframe for working an offer would generally be 90 days.

Using the Franchise Tax Board (FTB) offer-in-compromise section as a model, it is estimated that a Business Taxes Compliance Specialist (BTCS) will maintain an average caseload of 30 cases. The average turnover of cases will be 90 days, and the average yearly workload will be 120 cases. It is recommended to staff the unit with a Business Taxes Compliance Supervisor II and five BTCS's. It is also recommended to reclassify five Senior Business Taxes Compliance Representatives to the BTCS level to accomplish the staffing. Adjustments to staffing may be necessary once program development is complete and public awareness has increased.

2. A form would be developed for tax debtors to complete when submitting any offer-in-compromise. A pamphlet would also be developed detailing the procedure for submitting an offer, tax debtor's rights and responsibilities, and the general guidelines for acceptability of offers-in-compromise. Identical information would be made available on the Internet. An article would be published once each year in the Tax Information Bulletin to inform tax debtors of the offer-in-compromise program. Presentations would be made at seminars for the California Society of Enrolled Agents.

3. Revised procedures would be included in the Compliance Policy and Procedures Manual. Field staff would be trained on the new procedures in an effort to promote acceptance of the new guidelines. Greater knowledge and acceptance of the offer-in-compromise program will result in the solicitation by staff of a greater number of offers in the course of the collection process.

The procedures and form for a discharge of accountability would be modified to insure that an offer-in-compromise pamphlet is provided to all tax debtors prior to discharge.

B. Pros of the Staff Recommendation

- Many tax debtors do not have, and will not have in the foreseeable future, the income, assets or means to pay their tax liability. These tax debtors are often the subjects of marginally productive collection efforts or installment payment arrangements. If the Board can promote an offer-in-compromise whereby these tax debtors pay more than staff could collect within a reasonable period of time, then overall resources and staff time will be saved.

- Tax debtors can settle a burdensome debt, clear the state tax lien from their credit and get back on their feet financially.

- It will result in greater consistency of Board actions.

- Roadblocks, such as the hesitancy shown by staff, will be eliminated.

C. Cons of the Staff Recommendation

- Centralization of the offer-in-compromise process will lead to additional time spent on affected cases. A specialist in SP-OIC will need to spend time researching a case that the responsible district tax representative is already familiar with. This con is also a pro since a fresh, unbiased viewpoint is often beneficial.

- Centralized staff may not be aware of the details of a case that would impact a decision on an offer-in-compromise. Relevant details might include suspected fraudulent transfer of assets or hidden sources of income that are not documented in case notes. This problem may be overcome, however, since the proposed process will consider any recommendations and data by the district of control.

D. Statutory or Regulatory Change

The related proposed addition to the Revenue and Taxation Code, section 7093.6, allows for the administrative authority to accept offers in compromise on final tax liabilities. This proposed legislation will facilitate the offer-in-compromise program and will be considered by the Legislature in the 1999 Legislative Session.

The Board is currently reviewing the criteria proposed in the Legislative Proposal 3-1 for parity with the FTB proposed legislation and offer-in-compromise program.

E. Administrative Impact

Administrative impact is expected to be manageable since the new unit will be established as part of the existing Special Procedures Section. Efforts will include organization, hiring and accommodations for the new unit.

F. Fiscal Impact

1. Cost Impact

The cost to redirect existing staff to create the centralized Offer-in-Compromise Unit is estimated to be $49,136 initially, and $55,207 ongoing annually. These costs are based on salary differential, office space reconfiguration, and developing and printing new forms and pamphlets. It is assumed that no additional equipment will be needed.

2. Revenue Impact

The impact that the recommended changes would have on revenue is not measurable since there is no definitive method available to determine the increase in the number of offers submitted by tax debtors as a result of increased public awareness or uniform acceptance policy. While it is not measurable, it is expected that revenues will be increased as a result of this proposal.

G. Taxpayer/Customer Impact

Taxpayer impact will be positive if the staff recommendations are adopted. Taxpayers will appreciate the ability to quickly settle a burdensome debt, clear the state tax lien from their credit and receive more consistent treatment.

H. Critical Time Frames

No time frames that are associated with the staff recommendations are considered critical. An action plan is attached as **Exhibit 1**.

VI. Alternative

A. Description of the Alternative

Under this alternative, staff could develop a form and explanatory pamphlet to publicize and standardize the offer-in-compromise program while not adjusting staffing or district control of the accounts. Within each district, a Specialist could be designated to investigate and make recommendations for all offers under district control. Training could be provided to enhance statewide uniformity. Special Procedures could continue to review all recommended offers.

B. Pros of the Alternative

- This alternative is less costly than the staff recommendation, since no equipment or office space costs are needed.

- This alternative allows for the retention of control by the district. Collection action and negotiation for installment payment agreements will not be interrupted by inadequate offers.

C. Cons of the Alternative

- Statewide uniformity may be difficult to obtain since the function will not be centralized.

- “Ownership” of difficult aged collection cases may adversely affect a collector’s decision making in relation to the compromise of a debt.

D. Statutory or Regulatory Change

There is no change from the staff recommendation.

E. Administrative Impact

The administrative impact of the alternative is less than the staff recommendation since no formation of a new unit is required.

F. Fiscal Impact

1. Cost Impact

The cost impact of the alternative is expected to be $1,671 in initial cost to develop and distribute a form and pamphlet, with ongoing annual costs of $807.

2. Revenue Impact

As with the staff recommendation, the impact that the alternative would have on revenue is not measurable since there is no definitive method available to determine the increase in the number of offers submitted by tax debtors as a result of increased public awareness or uniform acceptance policy. While it is not measurable, it is expected that revenues will be increased as a result of this proposal.

G. Taxpayer/Customer Impact

As with the staff recommendation, taxpayer impact will be positive if the alternative is adopted. Taxpayers will appreciate the ability to quickly settle a burdensome debt and clear their credit.

H. Critical Time Frames

No time frames that are associated with the alternative are considered critical.

Prepared by Sales and Use Tax Department, Program Planning Division
Current as of February 11, 1999.

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Exhibit 1

ACTION PLAN

OFFER-IN-COMPROMISE PROGRAM CENTRALIZATION
SALES AND USE TAX DEPARTMENT

The proposed centralization of the Sales and Use Tax Department Offer-in-Compromise Program, as detailed in the 99-002 Formal Issue Paper, would be accomplished based on the following schedule.

Action	Begin	Complete
Develop Formal Issue Paper and submit to the Board at the February 23, 1999 Business Taxes Committee Meeting.	1/11/99	2/23/99
Develop a standardized form for submission of all offers-in-compromise.	2/24/99	6/30/99
Develop a pamphlet detailing the procedure for submitting an offer, tax debtor’s rights and responsibilities, and the general guidelines for acceptability of offers-in-compromise. Include the above form.	2/24/99	6/30/99
Confirm workload and staffing levels.	2/24/99	6/30/99
Arrange for facilities, to include workspace, data and phone lines and cubicle configuration.	4/1/99	7/31/99
Assign staff to the Special Procedures Section – Offer-in-Compromise Team (SP-OIC). Begin with a Business Taxes Compliance Supervisor II.	8/1/99	11/1/99
Transfer responsibility for all offer-in-compromise review and recommendation to SP-OIC.	11/1/99	11/1/99
Publish an article in the December Tax Information Bulletin to inform tax debtors of the offer-in-compromise program.	10/1/99	12/1/99
Train SP-OIC staff on new procedures. Also train field staff on procedures to encourage statewide acceptance and utilization.	10/1/99	12/31/99